106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–615

INTERNET ACCESS CHARGE PROHIBITION ACT OF 2000

MAY 12, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1291]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1291) to prohibit the imposition of access charges on Internet service providers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

79–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Access Charge Prohibition Act of 2000".

SEC. 2. PROHIBITION OF CHARGES ON PROVIDERS OF INTERNET ACCESS SERVICE.

Section 254 of the Communications Act of 1934 (47 U.S.C. 254) is amended by adding at the end the following new subsection:

"(l) PROHIBITION OF CHARGES ON INTERNET SERVICE PROVIDERS.—

"(1) IN GENERAL.—Notwithstanding subsection (b)(4) or (d) or any other provision of this title, the Commission shall not impose on any provider of Internet access service (as such term is defined in section 231(e)) any contribution for the support of universal service that is based on a measure of the time that telecommunications services are used in the provision of such Internet access service.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall preclude the Commission from imposing access charges on the providers of Internet telephone services, irrespective of the type of customer premises equipment used in connection with such services.".

PURPOSE AND SUMMARY

H.R. 1291, the Internet Access Charge Prohibition Act of 2000, will preclude the Federal Communications Commission (FCC) from imposing on providers of Internet access service per-minute charges that are intended to support universal service.

BACKGROUND AND NEED FOR LEGISLATION

The FCC's interstate access charge regime was established in 1983 to require long distance carriers (*e.g.*, AT&T, Worldcom) to compensate local exchange carriers (*e.g.*, Bell Atlantic, SBC, GTE) for the cost of originating and terminating long distance telephone calls, as well as to provide support for universal telephone service in high-cost and rural areas. Thus, when a consumer makes a long distance telephone call, a long distance carrier pays a per-minute usage fee (in addition to other per-line fees) to the local exchange carrier that originates and terminates the long distance call. These per-minute and per-line fees are more commonly known as "access charges." Under current FCC rules governing per-minute access charges, long distance carriers, and ultimately their consumers, pay local exchange carriers roughly 2.4¢ for each minute of long distance service.

At the same time it established its access charge regime in 1983, the FCC specifically exempted information service providers from having to pay interstate access charges. The term "information service provider" (which the FCC historically referred to as "enhanced service providers") covers a broad range of non-telecommunications service providers, including Internet service providers (ISPs) like America Online and Mindspring. Accordingly, when a consumer logs on to the Internet via a local call to an ISP, the ISP and its subscribers do not pay the per-minute access charges that a consumer of long distance services would have to pay, irrespective of whether the consumer surfs Web sites in distant locations. The FCC based its decision on the fact that the information services industry was in its infancy as of 1983. Moreover, the FCC was concerned that, if required to pay per-minute access charges, ISPs would inflict "rate shock" on their subscribers; consumers tend to stay on-line an average of 45 minutes, whereas the average telephone call lasts roughly five minutes.

In recent years, however, the FCC's exemption for information service providers has been the subject of much debate and litigation. Some in the local exchange carrier (LEC) industry have argued that the rationale for the FCC's exemption no longer makes sense, given that many ISPs are larger in terms of market capitalization than many telecommunications service providers that still must pay per-minute access charges. In addition, some LECs argue that many information service providers (and ISPs, in particular) place a substantial burden on the public telephone network, and as such, these ISPs and their consumers should be required to contribute to the network's maintenance.

The information services industry counters that it contributes to the growth and modernization of the telephone network by virtue of the growing residential and business demand for additional telephone lines that are dedicated for access to the Internet. Moreover, the industry insists that its members directly contribute to the maintenance of the network by paying the same charges as similarly situated end-users (*e.g.*, the subscriber line charge (SLC), the business line tariff, and where, applicable, a private-line interconnection charge). The industry notes that a portion of these payments flow through the local exchange carrier to the Universal Service Fund. The industry also points out that the current exemption enables ISPs to continue charging consumers flat-rate monthly fees for access to the Internet (compared to long distance service, which is based on minutes of use).

The ongoing debate about the extent to which information service providers should be required to support universal service, in addition to the extent to which they should pay for the cost of accessing the public switched telephone network, raises a number of complex issues that the Committee has yet to explore and develop a more complete record. Therefore, at this point in time, the Committee seeks to codify the FCC's access charge exemption, to the extent per-minute access charges are assessed for the purpose of supporting universal service. Moreover, the codified exemption applies only to providers of Internet access service, as that term is defined in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. § 231(e)(4)).

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held two hearings that relate to H.R. 1291. On April 6, 2000, the Subcommittee held an oversight hearing to receive a summary of the report of the Advisory Commission on Electronic Commerce. The Subcommittee received testimony from the Honorable James Gilmore, the Governor of the Commonwealth of Virginia, and Chairman of the Advisory Commission on Electronic Commerce.

On Wednesday, May 3, 2000, the Subcommittee also held a legislative hearing on H.R. 1291, as well as H.R. 4202, the Internet Services Promotion (ISP) Act of 2000. The Subcommittee heard testimony from two panels of witnesses. Panel I consisted of only Congressman Fred Upton (R-MI), the sponsor of H.R. 1291. Panel II included: Mr. Peter Lowy, co-President, Westfield-America, Inc. (on behalf of the e-Fairness Coalition); Mr. Harris N. Miller, President, Information Technology Association of America (ITAA); Mr. Grover Norquist, President, Americans for Tax Reform (ATR); and Mr. Leroy Grey, RAVEN-Villages Internet.

COMMITTEE CONSIDERATION

On May 10, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection was discharged from the further consideration of H.R. 1291 by unanimous consent. The Committee ordered H.R. 1291 reported, with an amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Bliley to order H.R. 1291 reported to the House, with an amendment, was agreed to by a voice vote. A motion to table the bill by Mr. Deutsch was not agreed to by a voice vote.

The following amendment was agreed to by voice vote:

> An amendment in the nature of a substitute by Mr. Upton, #1, precluding the FCC from imposing on providers of Internet access service any per-minute charges intended for universal service support.

The following amendment was withdrawn by unanimous consent:

> An amendment to the amendment in the nature of a substitute by Mr. Stearns, #1a, establishing an Advisory Commission to examine state and local taxation of telecommunications services.

The Committee took a record vote on the following amendment. The names of Members voting for and against follow:

> An amendment to the amendment in the nature of a substitute by Mr. Markey, #1b, clarifying that the FCC is precluded from imposing per-minute charges on Internet telephony services.

Committee on Commerce
One Hundred Sixth Congress

Record Vote No. 32

Bill: H.R. 1291, Internet Access Charge Prohibition Act of 2000
Amendment or Motion: Amendment by Mr. Markey, #1b.
Disposition: NOT AGREED TO, by a record vote of 8 yeas and 31 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall	X		
Mr. Barton	X			Mr. Boucher			
Mr. Upton		X		Mr. Towns			
Mr. Stearns				Mr. Pallone			
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox				Mr. Deutsch	X		
Mr. Deal				Mr. Rush	X		
Mr. Largent		X		Mrs. Eshoo	X		
Mr. Burr		X		Mr. Klink			
Mr. Bilbray		X		Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer		X	
Mr. Norwood		X		Mr. Wynn		X	
Mr. Coburn		X		Mr. Green		X	
Mr. Lazio		X		Mrs. McCarthy			
Mrs. Cubin				Mr. Strickland		X	
Mr. Rogan				Mrs. DeGette		X	
Mr. Shimkus		X		Mr. Barrett		X	
Mrs. Wilson				Mr. Luther	X		
Mr. Shadegg		X		Mrs. Capps		X	
Mr. Pickering							
Mr. Fossella							
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

Committee Oversight Findings

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative and oversight hearing and made findings that are reflected in this report.

Committee on Government Reform Oversight Findings

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

New Budget Authority, Entitlement Authority, and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1291, The Internet Access Charge Prohibition Act of 2000, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

Committee Cost Estimate

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

Congressional Budget Office Estimate

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 11, 2000.

Hon. Tom Bliley,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1291, the Internet Access Charge Prohibitions Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

Barry B. Anderson.
(For Dan L. Crippen, Director).

H.R. 1291—Internet Access Charge Prohibition Act of 2000

Summary: H.R. 1291 would prohibit the Federal Communications Commission (FCC) from collecting fees from Internet service providers to finance the Universal Service Fund that are based on the length of time that the Internet access service is provided. Currently, the FCC does not charge any such fees and has no plans to do so. Internet service providers carry data transmissions of their customers, and such data may be used to provide telephone services. H.R. 1291 would allow the FCC to charge Internet service providers for the Universal Service Fund only when they provide telephone services.

Certain charges imposed on telecommunications services either by states or the federal government under the Telecommunications Act of 1996 to support universal service are recorded in the federal budget. (Universal service is a program intended to promote the availability of telecommunications services at affordable rates.) Because H.R. 1291 could affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible. H.R. 1291 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: Under the Universal Service Fund established by the Telecommunications Act of 1996, the FCC seeks to provide universal access to telecommunications services through various charges to some telephone companies and payments to others. The 1996 act also permits states to establish additional collections and payments to preserve and advance universal service, so long as these mechanisms are not inconsistent with federal law.

The Universal Service Fund records these transactions in the federal budget as governmental receipts and direct spending. To the extent that the FCC or states would choose to support universal service through charges on Internet service providers based on the time such services are used, H.R. 1291 could result in forgoing revenues and direct spending. The FCC does not charge any such fees and has no plans to do so. H.R. 1291 would allow the FCC to charge Internet service providers when customers' data transmissions are used to support telephone services; therefore, CBO estimates that any change in revenues and direct spending as a result of this legislation would be negligible.

The costs of this legislation fall within budget function 370 (commerce and housing credit).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. As noted above, H.R. 1291 could affect direct spending and receipts, but CBO estimates that any such effects would be negligible.

Intergovernmental and private-sector impact: H.R. 1291 contains no private-sector or intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Mark Hadley; revenues: Hester Grippando; impact on State, local, and tribal governments: Shelley Finlayson; impact on the private sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title.

Section 1 of H.R. 1291 provides the bill's short title, the "Internet Access Charge Prohibition Act of 2000."

Section 2. Prohibition of charges on providers of Internet access service

Section 2 of the bill amends section 254 of the Communications Act of 1934 (47 U.S.C. § 254) to preclude the FCC from imposing on any provider of Internet access service (as such term is defined in section 231(e)(4) of the Act) any contribution for the support of universal service that is based on a measure of the time that telecommunications services are used in the provision of such Internet access service. Section 2 also contains a savings clause that makes clear that nothing in H.R. 1291 precludes the FCC from imposing access charges on the providers of Internet telephone services, irrespective of the type of customer premises equipment used in connection with such services.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 254 OF THE COMMUNICATIONS ACT OF 1934

SEC. 254. UNIVERSAL SERVICE.

(a) * * *

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(l) PROHIBITION OF CHARGES ON INTERNET SERVICE PROVIDERS.—

(1) IN GENERAL.—Notwithstanding subsection (b)(4) or (d) or any other provision of this title, the Commission shall not im-

pose on any provider of Internet access service (as such term is defined in section 231(e)) any contribution for the support of universal service that is based on a measure of the time that telecommunications services are used in the provision of such Internet access service.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall preclude the Commission from imposing access charges on the providers of Internet telephone services, irrespective of the type of customer premises equipment used in connection with such services.

ADDITIONAL VIEWS

This legislation, H.R. 1291, is intended to make sure that when an individual logs on to the Internet, he or she will not be charged by the minute for the privilege of doing so. That is a worthy goal, and I support it.

I am sure that few Congressional offices have escaped an insidious e-mail campaign over the past year decrying fictitious legislation that would purport to accomplish precisely the opposite result of the bill we report today. I only hope that passage of H.R. 1291 will finally extinguish this "cyber-myth" once and for all.

I am not convinced, however, that mounting a massive legislative counter-attack on a fictitious bill, introduced by a make-believe Congressman, is the best use of this Committee's time, or that of the House. Particularly when the substance of this bogus bill—if it were actually introduced—is so contrary to the public interest that it would have zero chance of success in this Committee.

My puzzlement extends further to the speed with which the Republican leadership wants this bill to go to the floor. They apparently believe this bill is so important that we were asked to dispense with regular order and bypass Subcommittee consideration. I find it amazing that a phantom Congressman has more success jump-starting the legislative process than those of us elected by the people.

Certainly our constituents should know that Congress has no intent of installing a meter on their use of the Internet, and this legislation will alleviate their concern in that regard. However, I am disappointed that the majority refuses to seize the opportunity presented here to address a greater and more genuine threat to consumer pocketbooks. That is, the real possibility that burgeoning new Internet services, such as Internet telephony, paging, web-based wireless services, and countless others on the horizon may evade the responsibility of contributing to support the Universal Service Fund—a fund which ensures that all Americans have access to affordable telephone service.

These services will continue to migrate from traditional networks to the Internet and, unless we act, the Universal Service Fund will be left to wither on the vine. Traditional network service providers will be forced to raise prices wherever they can, and that can only spell trouble when it comes to local phone rates for all consumers, but particularly those who live in rural areas and the working poor. Of course, these are the same Americans who are stuck on the wrong side of the "digital divide" and are least able to take advantage of high-tech alternatives.

This Committee's approach to telecommunications policy has always been consistent and straightforward: like services should be treated in a like manner. We had the opportunity to apply that philosophy here, and it would have been entirely proper that we do so.

Unfortunately, in our haste to get legislation to the floor that solves an imaginary problem, we squandered the opportunity to address one that is all too real: the prices Americans will pay for telecommunications services if today's disparate regulatory treatment is permitted to continue. Whether a service is offered via the Internet or through a traditional network, the obligations attendant to it should be the same.

JOHN D. DINGELL.

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